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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,260	11/08/2001	Warren P. Williamson IV	IDX-02A	5011
26875	7590	07/13/2004	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			NGUYEN, ANH TUAN TUONG	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/986,260	Applicant(s) WILLIAMSON ET AL.	
	Examiner Anh Tuan T. Nguyen	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 11, 19, 30, 38, 50, 53-55 and 62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-29, 31-37, 39-49, 51, 52 and 56-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species I in the reply filed on 04/12/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9, 14-28, 32-37, 39, 42-49, 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Fogarty (4,821,719).

Fogarty discloses a clamping device that is capable of occluding a vessel during a surgical procedure comprising an internal core portion (V) having a distal end and surfaces adapted to be inserted transversely into a vessel, an external clamping portion (Figure 1) having first and second pivotally connected arms, or a pair of activating members as recited in claim 20, (18, 20) wherein the pair of arms are having distal ends being curved toward one another (24), a pair of activating members, or engagement arms as recited in claim 20, (30), a ratchet mechanism or mating tips (22). With respect to the recitation of a "seal member", since the claims as written should be broadly construed, and since there are no additional structures further

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defining the seal member, the examiner interpreted the seal member as only being the external surface of the core or tube (V).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10, 12, 13, 29, 31, 40, 41, 44, 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty in view of Hung et al (6,413,228).

Fogarty discloses an invention substantially as claimed. However, Fogarty does not disclose specifically the core (V) or the activating members having different hardness nor does Fogarty disclose the core (V) having multiple lumens or ports. Hung discloses a core or flexible tube (Figures 8-8C) having various thickness and hardness (col. 3, lines 29-52) and side ports (122) to permit flows into or out of the tube. Therefore, it would have been obvious for one skilled in this art to modify the invention to Fogarty to include a core member having varying hardness in order to accommodate the intended location or purpose of use and also to include side port(s) in order to accommodate and regulate the flow of either a medicament or blood, or both, as taught to be desirable in Hung et al.

6. Claims 57-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty in view of Palti et al (5,624,454).

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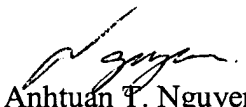
Fogarty discloses structurally an invention as broadly claimed. Palti discloses a clamp (Fig. 1) for occluding a blood vessel (abstract). However, neither Fogarty nor Palti teaches the claimed method of clamping both the vessel wall and the core. It is the examiner's position that if the core (V) in Fogarty to be used combination of the teaching disclosed in Palti would yield a method as claimed if one of ordinary skilled in this art would have the desire to clamp both the vessel wall and the core.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh Tuan T. Nguyen whose telephone number is 703-308-2154. The examiner can normally be reached on Mon-Fri, 0830-1800 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anh Tuan T. Nguyen
Primary Examiner
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